



DEPARTMENT OF VETERANS AFFAIRS

8320-01

48 CFR Parts 801, 806, 812, 837, 852, and 873

VA Acquisition Regulation: Simplified Acquisition Procedures for Health-Care Resources (Section 610 Review)

AGENCY: Department of Veterans Affairs.

ACTION: Notice of regulatory review.

SUMMARY: On January 24, 2003, Department of Veterans Affairs (VA) amended the VA Acquisition Regulation (VAAR) by establishing simplified procedures for the competitive acquisition of health-care resources, consisting of commercial services or the use of medical equipment or space, pursuant to the Veterans' Health Care Eligibility Reform Act of 1996 (38 U.S.C. 8151-8153). These procedures are codified at 48 CFR chapter 8. In developing these standards, VA performed a Regulatory Flexibility Analysis which indicated the rule could have a significant impact on a substantial number of small businesses.

VA has initiated a review of this rule under section 610 of the Regulatory Flexibility Act to determine if the rule should be continued without change, or should be amended or rescinded, to minimize adverse economic impacts on small entities. Please note that VA is in the process of rewriting the VAAR and will be reviewing the requirements of this rule in detail as part of this revision initiative. In the interim, VA solicits, and will consider, public comments on factors described in the Supplementary Information.

DATES: Comments must be received by VA on or before [Insert date 30 days after date of publication in the FEDERAL REGISTER].

ADDRESSES: Written comments may be submitted through www.regulations.gov; by mail or hand-delivery to the Director, Regulations Management (02REG), Department of Veterans Affairs, 810 Vermont Ave., NW, Room 1068, Washington, DC 20420; or by fax to (202) 273-9026. Copies of comments received will be available for public inspection in the Office of Regulation Policy and Management, Room 1063B, between the hours of 8:00 a.m. and 4:30 p.m. Monday through Friday (except holidays). Please call (202) 461-4902 for an appointment. In addition, during the comment period, comments may be viewed online through the Federal Docket Management System (FDMS) at www.regulations.gov.

FOR FURTHER INFORMATION CONTACT: Dennis Foley, (202) 461-4998, Office of the General Counsel, Professional Staff Group V; or Eyvonne Mallett, (202) 461-5101, Procurement Policy and Warrant Management Service (003A2A), Office of Acquisition, Logistics and Construction, Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420.

SUPPLEMENTARY INFORMATION:

The analysis published in the January 24, 2003 final rule (68 FR 3465) reviewed fiscal year (FY) 1998 individual service transactions valued in excess of \$25,000. In FY 1998, the Veterans Health Administration (VHA) reported approximately 6,000 individual service transactions above \$25,000 excluding classification codes C,

architect/engineering; E, purchase of structures; Q402, nursing home; Y, construction; and Z, maintenance of real property, all of which VA believes are not covered by this rule. Of those 6,000 transactions, approximately 3,000 were awarded to small businesses and approximately 900 were reported to non-profit businesses. Similar figures were reported in FY 1999. Of the total acquisition dollars associated with these 6,000 annual awards, we estimate that in FY 1998, approximately 42 percent, and in FY 1999, approximately 44 percent, were awarded to small businesses. In reviewing this analysis, VA determined that the impact on small businesses was minimal because the rule does not apply to the majority of VA acquisitions.

The rule only applies to competitive acquisitions of commercial services or the use of medical equipment or space conducted by VHA that specifically reference the authority of 38 U.S.C. 8153. The rule does not apply to acquisitions of supplies or equipment made on behalf of VHA or to acquisitions made on behalf of Veterans Benefits Administration (VBA) or National Cemetery Administration (NCA). Additionally, the rule does not apply to acquisitions of services for which other specific authorities apply, such as acquisitions of nursing home care services, which are acquired under the authority of 38 U.S.C. 1720, or to acquisitions of non-commercial services, such as construction. Therefore, VA developed the rule in a way that mitigated small business impact to the extent possible while still fulfilling the Veterans' Health Care Eligibility Reform Act of 1996 mandates.

VA has initiated a review of this rule under section 610 of the Regulatory Flexibility Act to determine if the rule should be continued without change, or should be

amended or rescinded, to minimize adverse economic impacts on small entities.

Please note that VA is in the process of rewriting the VAAR and will be reviewing the requirements of this rule in detail as part of this revision initiative. In the interim, VA solicits, and will consider, public comments on the following factors under this rule: (1) the continued need for the rule; (2) the nature of complaints or comments received concerning the rule; (3) the complexity of the rule; (4) the extent to which the rule overlaps, duplicates, or conflicts with other Federal, State, or local government rules; and (5) the degree to which technology, economic conditions, or other factors have changed in the area affected by the rule. VA still considers the rule necessary as it establishes simplified acquisition procedures for VA to acquire health-care resources consisting of commercial services or the use of medical equipment or space as authorized by 38 U.S.C. 8151-8153. No comments were received when the rule was initially published for public comment. In addition, VA has not received any complaints since the rule's final publication. The rule is not overly complex; however, it does overlap and change select provisions of Federal Acquisition Regulation (FAR) Part 15 on negotiated acquisitions. This is to provide VA contracting officers with additional tools and procedures, along with some simplification of the negotiated acquisition process, when deemed advantageous to VA. This rule does not in any way change the fundamental concept in acquisitions that all offerors are treated fairly. Consideration may be given to updating the rule to reflect any changes to FAR references or other citations of authority.

Signing Authority

The Secretary of Veterans Affairs, or designee, approved this document and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs. John R. Gingrich, Chief of Staff, Department of Veterans Affairs, approved this document on March 26, 2012, for publication.

Dated: March 29, 2012

Robert C. McFetridge,
Director of Regulation Policy and Management,
Office of the General Counsel,
Department of Veterans Affairs.

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